

**BOARD MEETING MINUTES
NOVEMBER 19, 2021**

1. CALL TO ORDER.

Dr. Gutierrez called the meeting of the Texas Optometry Board (TOB) to order at 9:00 a.m.

2. ROLL CALL.

A roll call vote was taken and quorum was present for the meeting.

Mario Gutierrez, O.D.	Chair
Ronald L. Hopping, O.D.	Vice Chair
Judy Chambers	Secretary/Treasurer
Carey A. Patrick, O.D.,	Member
John Todd Cornett, O.D.	Member
Bill Thompson, O.D.	Member
Meghan Schutte, O.D.	Member
Rene Pena	Member
Kelly Parker	Executive Director
Vincent Pina	Executive Assistant
Dennis McKinney	Assistant Attorney General

Note, Mr. Sheehan was excused from the meeting.

3. MINUTES.

The Board reviewed the July 30, 2021 meeting minutes. A motion was made by Dr. Patrick to accept the minutes and seconded by Dr. Hopping. The motion passed unanimously. (FOR – 8/OPPOSED – 0/ABSTAIN – 0)

The Board reviewed the August 27, 2021 meeting minutes. A motion was made by Dr. Thompson to accept the minutes and seconded by Dr. Patrick. The motion passed unanimously. (FOR – 8/OPPOSED – 0/ABSTAIN – 0)

The Board reviewed the October 6, 2021 meeting minutes. A motion was made by Dr. Cornett to accept the minutes and seconded by Mrs. Chambers. The motion passed unanimously. (FOR – 8/OPPOSED – 0/ABSTAIN – 0)

4. BOARD CHAIR REPORT.

Dr. Gutierrez presented the Board Chair Report. He thanked the Rules Committee for their hard work on the rules related to SB993. Dr. Gutierrez mentioned that the CE Committee continues to work towards goals of modernization with the new platform. Dr. Gutierrez also mentioned that the Board will start the conversation regarding requiring CPR certification. Dr. Gutierrez noted that the Board still planned to hold a dinner for past board members and the previous Executive Director, Mr. Kloeris. Finally, he noted that the agency will continue to focus on ways to enhance customer service and that he will be making committee assignments in January.

5. GENERAL MATTERS.

The Board discussed and considered the Agenda item under General Matters as follows:

- a. **2022 Board Meeting Dates.** The Board discussed 2022 meeting dates. The Board will meet on January 19-20, 2022, May 5-6, 2022, July 28-29, 2022, and November 3-4, 2022.
- b. **Optometry School Liaison Reports.** Dr. Schutte is the new liaison to Rosenberg School of Optometry. However, Dr. Schutte noted she sent emails but did not get a response. Dr. Gutierrez offered to help Dr. Schutte make contact. Dr. Cornett provided a brief update as the liaison for University of the Houston(UofH). He reported that Dr. DeLoach will be the contact for the professional responsibility course. Dr. Cornett noted that UofH made rehires to the staff as well. Finally, he offered that he provided Ms. Parker's information to the Dean at UofH. Ms. Parker commented that he had not yet reached out to her directly.
- c. **Board Approval of Experts Related to SB993.** Ms. Parker reviewed with the Board the application process for experts related to SB993. She discussed the qualifications and gave an overview of the preliminary review conducted by Dr. Cornett. She mentioned that a few applicants were denied due to being faculty, living outside of Texas and/or not meeting licensure requirements. Ms. Parker provided Board Members with a confidential list of ophthalmology and optometry experts for approval. She noted that the ophthalmology experts had also been approved by the Texas Medical Board.
- d. **Request for Board Opinion on Light Delivery Device for Light Adjustable Lens.** Dr. Schutte discussed information she researched regarding intraocular lens (IOL) that allows vision to be optimized following cataract surgery. She referenced the website Rx sight.com. Dr. Schutte noted that there is no cutting, no surgery and no invasive procedures required when utilizing the light adjustable lens. The Board discussed the information. Dr. Gutierrez requested Ms. Parker prepare a Board opinion on the use of same for the next meeting.
- e. **TOB Strategic Plan.** Ms. Parker provided the TOB strategic plan, 2021-2025, for Board Member. She mentioned that the next strategic plan will be due in June 2022. The agency has opened a customer service survey for

this purpose. Additionally, Ms. Parker encouraged Board Members to provide input on ideas for the next strategic plan.

- f. **Jurisprudence Exam Update.** Ms. Parker reported that the current jurisprudence examination is currently overdue for an update. Specifically, the exam had not been updated in 10 years. She recommended that the Board update the exam to reflect the current law and rules in addition to using it for initial licensure and potentially as a requirement in a disciplinary order. Dr. Gutierrez appointed Dr. Patrick to assist Ms. Parker with the jurisprudence exam update with a goal of having the update completed by the next meeting.
- g. **Annual Review of Executive Director.** Dr. Gutierrez discussed the personnel review of Ms. Parker and confirmed the Board was very satisfied with her work. He noted that he would meet with Ms. Parker after the meeting to review the survey results and comments. Mr. Pena moved to increase Ms. Parker's salary to the total amount authorized by the General Appropriations Act effective immediately. Dr. Schutte seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0).

6. PUBLIC COMMENT.

The Public Comment period opened at 10:00 a.m. No public comments were received.

7. EXECUTIVE DIRECTOR'S REPORT.

Ms. Parker presented the Executive Director's Report.

- a. **Budget Update.** The agency continues to work with the Board of Nursing through an interagency contract for accounting services. The agency recently submitted the Annual Financial Report and is working on the Operating Budget.
- b. **Licensing Statistics.** The following are licensing statistics as of November 12, 2021:

Total Licenses	5,110 (4,629 active; 478 inactive; 3 retired)
Total OGS	Total OGS: 3,830 (3,694 active; 135 inactive, 1 retired)
Military	122

- c. **Performance Measures.** Ms. Parker reported that the agency filed Q4 performance measures on October 7, 2021. The agency met all metrics with the exception of average days to case resolution. However, Ms. Parker noted the agency is making progress with the "days to case resolution" metric.
- d. **Renewal Season.** Ms. Parker reminded Board Members that the renewal season opened two weeks early this year on October 18, 2021. To date, approximately 500 licensees have been renewed but a total of 2,500 are set to renew by December 31, 2021.

- e. **Office Relocation.** Ms. Parker updated the Board on the relocation process to the Bush Building in 2022. She noted that she hoped to soon obtain a confirmed moving date for the agency.
- f. **ED Activities.** Ms. Parker informed the Board that she would be a panel speaker at the FARB conference in Ft. Worth, Texas in January 2022. She also reported that she would be participating in the TOA Conference this year as well.

8. LEGAL REPORT.

No new report.

9. COMMITTEE REPORTS.

ADMINISTRATIVE/LICENSING COMMITTEE.

Dr. Patrick, Chair of the Administrative/Licensing Committee, reported that four exams were held since the last Board Meeting (58 total registrants, 55 total took the exam, 55 total passed the exam). Since the last Board Meeting, 93 new licenses have been issued. The Committee reviewed one application for licensure without an exam and the candidate was denied.

CONTINUING EDUCATION COMMITTEE.

Dr. Thompson, Chair of the Continuing Education Committee, reported that the Committee reviewed and recommended approval of courses, which included 323 general hours, 389.5 D/T hours, 315 courses for a total of 712.5 hours. Dr. Patrick seconded the recommendation of the committee for approval of the courses.

Dr. Thompson reminded the Board the CE Committee is continuously trying to modernize the reporting process. He noted that the CE Broker project is on track to be rolled out in January 2022 as planned at this time.

Dr. Thompson also reported that the Continuing Education Committee considered and approved one exemption from a licensee who is currently in the hospital due to serious injuries.

Pursuant to Section 351.309 of the Texas Optometry Act, the Board may exempt a licensee if the person submits proof that the person suffered a serious or disabling illness or physical disability preventing the person from complying with the requirements during the most recent license term.

The Continuing Education Committee recommends that the licensee complete the PR course this year for his renewal but that the next renewal cycle he be required to complete 40 total hours of CE, with 32 hours being D/T.

Dr. Thompson also mentioned that the committee has shared the list of possible professional responsibility topics for 2022. He encouraged Board Member feedback so that the topics may be finalized. Dr. Gutierrez clarified that we are going to request that the courses be approved by Dr. Thompson to ensure clarity for all licensees.

INVESTIGATION-ENFORCEMENT COMMITTEE

Dr. Gutierrez informed the Board that they would be considering Case No. 2021-00039 an informal conference on September 29, 2021 and Case No. 2021-00086 an informal conference on November 5, 2021. He mentioned that Mr. Roger Borgelt, attorney for both Respondents, requested to address the full Board at the meeting. Dr. Gutierrez consulted with Mr. McKinney, legal counsel for the Board, and agreed to grant Mr. Borgelt 10 minutes to address the Board regarding both cases.

Mr. Roger Borgelt addressed the Board in the open meeting. Mr. Borgelt noted that both of his clients were present at the meeting and are taking the allegations very seriously. He noted that factually the cases are slightly different but that he requested to combine the presentation because ... Mr. Borgelt asked the Board to consider that neither of the doctors had any intent to violate any of the Board's laws or regulations. Per Mr. Borgelt, they understood at the time of it that their actions were completely legal. He noted his clients were also very forthcoming with information and cooperative therefore that should be taken into consideration with regard to any decision made by the Board.

Per Mr. Borgelt, 351.005 of the Texas Optometry Act, involves an exemption as it relates to not preventing or interfering with directives given by physicians. In both cases, the doctors were under contract by an ophthalmology group, they were conducting exams that were created through the ophthalmology group...instructed to conduct the exams as created by the physicians and the doctors were acting as independent contractors. Intake forms...asked patients to complain to the Texas Medical Board. Mr. Borgelt also referenced Texas Attorney General Opinion, KP-0297 from March 2020 and suggested it refers to Section 351.005 of the Texas Optometry Act and that the exemption applies in both of the cases. This was a COVID-19 situation (exams done September 2021 and May 2021). Respectfully request that they not be sanctioned at all and would like there to be no license suspensions.

Dr. Hopping moved to go into Executive Session to consult with legal counsel as authorized by Section 551.071 of the Government Code for legal advice and Dr. Patrick seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

At 10:40 a.m., the Board went into Executive Session to consult with legal counsel and get legal advice concerning legal matters involving the following case numbers: 2021-00039 and 2021-00086. The Board returned to Open Session at 11:51 a.m. The Board did not take any action during the Executive Session.

Dr. Gutierrez requested Ms. Parker summarize the recommendation of the Investigation-Enforcement Committee for Case No. 2021-00039.

Case No. 2021-00039. Ms. Parker reported that the Investigation-Enforcement Committee recommended the following: A probated suspension for a term of six months, fine in the amount of \$2,000, successful completion of the jurisprudence exam and the licensee shall submit all new Texas patient eye exams for which spectacle or contact lens prescriptions are issued to the Board for a standard of care review for a period of three months beginning December 1st. She noted that the action is reportable to the National Practitioners Data Bank.

Dr. Cornett moved to accept and second the recommendations of the Investigation-Enforcement Committee related to Case Number 2021-0039. The motion passed unanimously. (FOR-5/AGAINST-0/ABSTAIN-3)

Case No. 2021-00086. Ms. Parker reported that the Investigation-Enforcement Committee recommended the following: A probated suspension for a term of six months, fine in the amount of \$2,000, successful completion of the jurisprudence exam and the licensee shall submit all new Texas patient eye exams for which spectacle or contact lens prescriptions are issued to the Board for a standard of care review for a period of three months beginning December 1st. She noted that the action is reportable to the National Practitioners Data Bank.

Dr. Patrick moved to accept and second the recommendations of the Investigation-Enforcement Committee related to Case Number 2021-0039. The motion passed unanimously. (FOR-5/AGAINST-0/ABSTAIN-3)

Ms. Parker provided information to the Board related to administrative fines that were assessed and paid since the last Board meeting. Administrative fines in the amount of \$125 were assessed due to failure to be compliant with Board Rule 275.2(g) as it specifically relates to the controlled substance course requirement. Dr. Patrick moved to accept the administrative penalties and close the files and Ms. Chambers seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0)

Ms. Parker provided statistics to the Board regarding complaints and investigations since the last Board meeting. Ms. Parker specifically pointed out that since the last meeting, the agency did not receive any cases related to the treatment of glaucoma and the agency has not taken any action regarding a licensee related to the treatment of glaucoma.

RULES COMMITTEE

Dr. Hopping, Rules Committee Chair, advised that the following rules were posted in the September 2021 *Texas Register* for public comment, no comments were received and therefore the Committee recommended the Board publish the rules for final adoption:

Adopted: 22 TAC 275.1 General Requirements. and,

Adopted: 22 TAC 273.4 Fees.

Dr. Hopping noted that Rule 275.1 specifically includes two providers for the professional responsibility course and that will remain the same for now although there have been complaints about the fee that is charged for the professional responsibility course and a push to have the Board open up the course to other providers. He said they have tabled adding additional providers to the PR course but there will be further discussion. Dr. Thompson moved to accept the Committees recommendations. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0) Ms. Parker noted that both rules would be final and effective 20 days after the publication in the *Texas Register*.

Final Adoption/Repeal: 22 TAC 280.11. Dr. Hopping noted that this was posted for repeal in August and no comments were received. Dr. Patrick moved to accept the Committee recommendations and seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0).

Proposal: 277.13 Complaints relating to glaucoma treatment – Preliminary Evaluation and Official Investigation.

Proposal: 277.14 Complaints relating to glaucoma treatment – Use of Case Review Consultant and Expert Panel.

Proposal: 277.15 Complaints relating to glaucoma treatment – Disciplinary Actions and Reporting.

Dr. Hopping mentioned that Rules 277.13, 277.14 and 277.15 were all related to SB993 and the Committee recommended proposal of all three rules with preamble in the *Texas Register*. Dr. Hopping noted that Rule 277.13 was slightly modified since the October 6, 2021 meeting. Dr. Cornett moved to accept the Committee recommendations and seconded the motion. The motion passed unanimously. (FOR-8/AGAINST-0/ABSTAIN-0).

Dr. Hopping also noted that the Rules Committee is doing background research on CPR requirements across the nation, including what schools are teaching and what other professions are requiring. Dr. Hopping also stated that the quadrennial rule review was initiated for Chapters 277, 279 and 280. Dr. Gutierrez announced that he was appointing a workgroup to perform the quadrennial rule review. He appointed Drs. Cornett and Thompson to the workgroup. Once the workgroup completes the review, Ms. Parker will transfer the information to the Rules Committee for review.

COMMITTEE ON PEER ASSISTANCE.

Chair Ms. Chambers reported news from the Professional Recovery Network (PRN) program. PRN is again under new leadership. There are four optometrists in the program, one is board-ordered and the other three are voluntary participants. She noted that the agency is currently working under a new contract with PRN for \$47,000 a year.

10. QUARTERLY BOARD MEMBER TRAINING.

Vincent Pina, Executive Assistant, Ms. Parker and Board Members reviewed the Board's renewal process for licensees.

11. ANNOUNCEMENTS.

No announcements.

12. ADJOURNMENT.

Dr. Thompson moved that the meeting be adjourned, Dr. Patrick seconded the motion. The motion passed unanimously. The meeting was adjourned at 12:40 p.m. (FOR-8/AGAINST-0/ABSTAIN-0)